



# USAID | BOSNIA-HERZEGOVINA

## ACTION MEMORANDUM

**Date:** August 22, 2014

**TO:** David J. Barth, Mission Director, Mission Competition Advocate

**FROM:** Vladimir Milin, EDO, Project Management Specialist *VM*

**SUBJECT:** JUSTIFICATION AND APPROVAL FOR OTHER THAN FULL AND OPEN COMPETITION (J&A) FOR TEC INCREASE AND TIME EXTENSION TO FOSTERING INTERVENTIONS FOR RAPID MARKET ADVANCEMENT (FIRMA) ACTIVITY

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1. This document sets forth the facts and rationale justifying the use of other than full and open competition. In accordance with FAR 6.302-2, when the Agency's need for the supplies or services is of such an unusual and compelling urgency the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

This document was prepared by Vladimir Milin, USAID/Bosnia-Herzegovina Economic Development Office, COR for the Fostering Interventions for Rapid Market Advancement (FIRMA) activity.

2. The nature and/or description of the action being approved:

This is a request to approve, on a non-competitive basis, an increase to the total estimated cost (TEC) by \$2,660,000.00 and to extend the completion date for an additional nine months under Contract No. 168-C-00-09-00103 with Cardno Emerging Markets (CEM). This will allow CEM to provide emergency technical assistance in the form of accelerated implementation to the Fostering Interventions for Rapid Market Advancement (FIRMA) project. The objective of this urgently needed action is to provide assistance to private enterprises in selected areas of Bosnia and Herzegovina which suffered significant damages due to recent catastrophic floods (greater areas of municipalities of Dobož, Samac and Maglaj).

The cost-plus-fixed-fee, three-year contract was competitively awarded in August 27, 2009 for a total cost plus fixed fee of \$12,156,670.00 and a priced option for two additional years in the amount of \$7,488,705.00. Modification number 7 exercised the option on May 29, 2012, increasing the total value by \$7,488,705.00 from \$12,156,670.00 to \$19,645,375.00 and extending the contract completion date to August 26, 2014. This modification to the Contract will increase the contract total estimated cost plus fixed fee to \$22,305,375.00 and extend the period of performance to May 26, 2015.

3. Description of the supplies or services required, including an estimated value:

The estimated value of the assistance program anticipated under this contract modification amounts to US \$2,660,000.00. This emergency program will be co-financed with Swedish International Development Agency (SIDA). USAID is funding \$2,000,000.00 and SIDA is funding US \$660,000.00. The Joint Financing Agreement between USAID/BiH and SIDA was signed on July 15, 2014.

The Mission seeks to provide assistance to private enterprises in selected areas of Bosnia and Herzegovina which suffered significant damages due to recent catastrophic floods (greater areas of municipalities of Dobož, Samac and Maglaj). The main objective of the activities under this modification

is to provide livelihood opportunities in selected flooded areas through technical assistance and a small grants facility to private companies in restarting their operations, retaining employees, and maintaining their space in the market. Ultimate beneficiaries of this assistance are private firms in BiH and BiH citizens gaining economic opportunities in selected regions of BiH affected by floods. The assistance will focus on following:

- a) Technical assistance to private firms in wood processing, metal processing, tourism and other sectors: to restart and expand production (or provision of services); connect to markets; develop business plans and necessary documentation to obtain commercial loans or access financing schemes provided by BiH authorities or international donors;
- b) Technical assistance to BiH authorities in structuring and implementing mechanisms to assist private firms in flood affected areas;
- c) Grant facility to private enterprises to restart and expand production (or provision of services) and to preserve and expand employment opportunities in selected flood affected areas;
- d) Grant facility to co-finance public sector assistance programs to private enterprises in flood affected areas;

The nature and scope of these activities are within the scope of the originally approved statement of work. Assistance to private enterprises for the purpose of job preservation and employment generation continue to be the main focus under the contract modification.

#### **4. Statutory authority permitting other than full and open competition:**

Statutory authority permitting the TEC increase and time extension can be found at FAR Part 6.302-2, "Unusual and Compelling Urgency" which provides "... when the Agency's need for supplies and services is of such an unusual and compelling urgency that the Government would be seriously injured unless the agency is permitted to limit the number of sources from which it solicits bids or proposals, full and open competition need not be provided for.

*"6.302.2(b) Application. This authority applies in situations where:*

*(1) An unusual and compelling urgency precludes full and open competition, and*

*(2) Delay in award of a contract would result in serious injury, financial or other to the Government."*

At the beginning of May, heavy rains caused widespread flooding across northeastern and central Bosnia and Herzegovina (BiH). Approximately 1.5 million people have been affected by the flood disaster. Reports indicate three months' of rain fell in a matter of days, making this the worst flooding in the country's recorded history. Landslides and flooding have affected more than 30% of the country, completely devastating dozens of communities, thousands of hectares of agricultural land, homes, and hundreds of businesses. The floods disrupted basic services, including production and delivery of food, drinking water, healthcare, and schooling, thereby putting children at risk of malnutrition and disease. The manufacturing sector, namely consisting of private enterprises, suffered damages that significantly reduced and in some instances completely diminished manufacturing capacity therefore putting significant number of persons at risk of losing jobs.

The magnitude of flood effects on the manufacturing sector and livelihoods of BiH citizens constitute an unusual and compelling urgency which satisfies the definition of FAR 6.302.2(b)(1).

USAID's Mission in BiH is universally recognized both by the host country Government and other donors as the leading donor in private enterprise development. Successful implementation of private sector assistance programs attracted other donors to partner with USAID/BiH in financing the development programs enabling the Mission to leverage in excess of US \$27 million of other donor's

funds to co-finance various USAID assistance programs. Through its portfolio of projects USAID/BiH invested substantial resources to private enterprises in wood processing, metal processing and tourism sectors of BiH. The recent floods affected a great number of private enterprises which are the primary sources of economic opportunities for citizens of BiH. In the aftermath of floods, USAID/BiH provided urgent assistance and also mobilized other donors. While many international donors expressed interest in financing the repairs of necessary public infrastructure and housing, the potential loss of jobs due to damages to private enterprises remain the greatest challenge and risk to the BiH economy and stability. As USAID/BiH is seen as the leader in private sector development, many international donors and BiH authorities look to USAID/BiH for leadership in restoring the livelihoods of citizens in affected areas. SIDA expressed interest in partnering with USAID/BiH to provide assistance to private enterprises in flood affected areas and committed \$660,000.00 to co-finance continuation of the FIRMA project (the Joint Financing Agreement was signed on July 15, 2014).

Failure to quickly mobilize assistance to private enterprises in affected areas would:

- (a) Put at risk past USAID investments in private sector development (significant number of private enterprises damaged in floods are either beneficiaries of past programs or critical to successful operation of value-chains), and;
- (b) Greatly reduce the ability of USAID/BiH to leverage other donor funds and influence host government programs.

This would constitute a serious injury to the Government as defined in FAR 6.302.2(b)(2).

*"6.302.2(c) Limitations*

*(1) Contracts awarded using this authority shall be supported by the written justifications and approvals described in 6.303 and 6.304. These justifications may be made and approved after contract award when preparation and approval prior to award would unreasonably delay the acquisition."*

Please see below written justifications and approvals as described by 6.303 and 6.304.

*(2) This statutory authority requires that agencies shall request offers from as many potential sources as is practicable under the circumstances.*

Immediately after the floods occurred, USAID/BiH held a flood response meeting with all its partners (which allowed the fastest possible response to this emergency) to solicit as many different ideas on how to respond to crisis as rapidly as possible within each partner's statement of work. In many cases, it was the same SoW but provided in a greatly accelerated pace. USAID/BiH received over 100 proposals from USAID implementing partners and local organizations.

*"(d) Period of Performance.*

*(1) The total period of performance of a contract awarded using this authority--*

*(i) May not exceed the time necessary--*

*(A) To meet the unusual and compelling requirements of the work to be performed under the contract; and*

*(B) For the agency to enter into another contract for the required goods and services through the use of competitive procedures; and*

*(ii) May not exceed one year unless the head of the agency entering into the contract determines that exceptional circumstances apply."*

The proposed contract modification anticipates a nine-month extension and meets the period of performance requirements.

**5. A demonstration that the proposed contractor's unique qualifications or the nature of the acquisition requires use of the authority cited:**

The nature of this acquisition: responding to the immediate needs of the flooding, required the use of the "unusual and compelling urgency" authority as an exception to competition. The flooding created a situation of urgency and chaos in BiH. Providing needed technical assistance with an implementer that was already on the ground was critical to adequately respond to the potentially dire consequences of the flooding and to protect USAID's past investments of assistance in the private sector.

The FIRMA project has been the USAID/BiH Mission's primary mechanism for providing assistance to the development of private enterprises in wood processing, metal processing and tourism sectors of BiH. Over the course of project implementation (since August 2009), assistance was successfully provided to over 440 SMEs which resulted in increased sales, exports and employment in assisted enterprises (in 2012, FIRMA-assisted organizations contributed to 29% of wood processing exports, 21% of metal processing exports and 65% of tourism sector). In implementing the FIRMA project, the implementer has successfully engaged:

- a) local, regional development agencies and chambers of commerce: FIRMA works through and with a network of 19 BiH organizations which enables the project to greatly expand the footprint
- b) BiH public sector: FIRMA developed, tested and successfully implemented a series of workforce development activities and quality certification programs for SMEs in partnership and co-financing with BiH public sector (Employment Bureaus, Ministries, educational institutions, Foreign Trade Chamber, etc.)
- c) private sector: over 440 SMEs assisted
- d) other donors: coordinated private enterprise development activities and leveraged financing for various initiatives from GIZ, Swiss Development Agency, EC, funded projects, IFC, etc.

The FIRMA project operates in an extremely complex political environment. Despite political complexities, FIRMA managed to develop productive relationships with private sector, public sector and other donors and has gained a reputation as a credible and reliable partner and leader in private enterprise development in BiH.

The FIRMA team possesses in-depth knowledge in areas of product design (both esthetic and product safety), productivity (optimization of manufacturing processes, introduction of new technologies), access to market (in conjunction with product design, B2B linkages were created through a network of sales agents in several EU countries), introduction of quality management systems and trade certification ISO, FSC, CoC, CE, product safety, access to finance (network of business consultants for preparation of loan applications for companies), and workforce development programs. FIRMA successfully utilized a small grant facility of US\$3.3 million under the contract. FIRMA's operating procedures and systems of controls and oversight in administering grant facility ensure programmatically appropriate utilization of grant facility, timeliness and reporting.

The aftermath of floods created urgency in addressing economic stability in affected areas. Strategic capabilities of the FIRMA team, established linkages with key public sector stakeholders and its reputation among other donors provided a platform to provide quick delivery of targeted assistance to enterprises while keeping the risks low. The reputation of the FIRMA team amongst stakeholders and donors resulted in the decision of SIDA to provide additional funding to complement USAID's funds in helping to restore the livelihood in affected areas.

The USAID/BiH concluded, in a situation of urgency and increased political complexity in BiH, the provision of time-critical and highly specialized technical services by the present implementer is required to adequately respond to the urgency created by this natural disaster, and to protect past investments of USAID assistance programs.

**6. Description of the efforts made to ensure offers are solicited from as many potential sources as practicable, including whether a notice was or will be publicized as required by Federal Acquisition Regulation (FAR) 5.202 [AIDAR 705.002].**

Immediately after the floods occurred, USAID/BiH invited all current implementers, representatives of NGOs, and other donors to a flood-response meeting to solicit as many different ideas on how to rapidly respond to the crisis as possible. USAID/BiH received over 100 proposals from USAID implementing partners and local organizations. An official notice was not publicized requesting proposals specifically for flood response activities in accordance with FAR Part 5.202(a)(2) because making such a request was simply not practicable under the circumstances. The situation was desperate and fluid and required immediate response. These organizations were already operating in flood affected areas, were familiar with and in the communities, and they knew what needed to be provided urgently. To try and advertise would have put the flood affected communities at greater risk. Their survival depended upon rapid application of relief of efforts. However, in addition to holding a meeting with all of our partners, USAID/BiH has instructions and applications on its website on how to submit applications.

**7. A determination by the Contracting Officer that the anticipated cost to the Government will be fair and reasonable:**

USAID/BiH will conduct a cost analysis of the FIRMA proposal to determine cost accuracy. This budget will be compared with historical costs from the activity that were submitted over the last five years. As the implementer was already operating in country under a USAID/BiH contract, they are simply extending current costs to assist in the disaster. These costs were previously determined to be fair and reasonable.

**8. Description of the market research conducted, and the results or a statement of the reasons market research was not conducted:**

Market research for this activity was not conducted. The Mission made a determination based on following:

The USAID/BiH Economic Development Office actively manages a portfolio of private sector development projects. Some of them are jointly financed by other donors and USAID is frequently involved in discussions and coordination meetings with many other donors in BiH. This gives EDO' staff the ability to obtain the most relevant information on capabilities of US and local implementing partners in BiH. In addition, the FIRMA project implementer is successfully engaging a network of 19 local implementing partners.



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